



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 23, 1995

Mr. Larence Coleman
Director
Harris County Community Supervision
and Corrections Department
Courthouse Annex 21
49 San Jacinto Street
Houston, Texas 77002

OR95-1120

Dear Mr. Coleman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 35039.

The Harris County Community Supervision and Corrections Department (the "department") received an open records request for documents detailing all investigations by two particular individuals for the department. You state that you have released all of the documents related to the applicable investigations with the exception of two active internal affairs criminal investigations. You contend that the department is a member of the judiciary and therefore not subject to the Open Records Act. You also claim that these two investigations may be withheld from required public disclosure pursuant to section 552.108(a) of the Government Code. You have submitted for our review copies of the documents contained in the two investigative files at issue.

Section 552.003(b) of the Government Code excludes the judiciary from the list of governmental bodies that are subject to the provisions of the Open Records Act. Therefore, records of the judiciary are not subject to the Open Records Act. *But see Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.—San Antonio 1983, no writ) (certain records held by Webb County juvenile board not directly relating to judicial functions subject to act). This office must therefore determine whether the requested records, which are maintained by the department, are records of the judiciary.

In this regard, we note at the outset that the state courts are responsible for supervising probationers. Section 1 of article 42.12 of the Code of Criminal Procedure provides in pertinent part:

It is the purpose of this article to place *wholly* within the state courts the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of community supervision, *and the supervision of defendants placed on community supervision*, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. [Emphasis added.]

In Open Records Decision No. 236 (1980) at 2, this office held that because district court judges have the ultimate direction and control over the supervision and rehabilitation of probationers, probation officers who act according to the court's direction serve merely as the court's agents in carrying out their supervisory duties; consequently, the probation department maintains probationers' records solely on behalf of the court. *Cf. Benavides*, 665 S.W.2d at 151, (county juvenile board not "controlled" or "supervised" by court). The records therefore were those of the judiciary and not subject to the provisions of the Open Records Act. Open Records Decision No. 236 (1980) governs your request. The requested records are records of the judiciary and therefore not subject to the Open Records Act.¹

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/rho

Re: ID# 35039

¹The release of these records is within the discretion of the court, acting through its agent, the probation department. Open Records Decision No. 236 (1980) at 2-3.

Enclosures: Submitted documents

cc: Mr. Wayne Dolcefino
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(w/o enclosures)